

**FOURTH DAY.**

Senate Chamber,  
Austin, Texas,  
January 16, 1933.

The Senate met at 10 o'clock a. m., pursuant to adjournment, and was called to order by Senator Walter Woodward.

The roll was called, a quorum being present, the following Senators answering to their names:

Beck.	Oneal.
Blackert.	Pace.
Collie.	Parr.
DeBerry.	Patton.
Duggan.	Poage.
Fellbaum.	Purl.
Greer.	Rawlings.
Holbrook.	Redditt.
Hopkins.	Regan.
Hornsby.	Russek.
Martin.	Sanderford.
Moore.	Small.
Murphy.	Stone.
Neal.	Woodward.

Absent—Excused.

Cousins. Woodul.  
Woodruff.

Prayer by the Chaplain.

Pending the reading of the Journal of yesterday, the same was dispensed with on motion of Senator Rawlings.

**Petitions and Memorials.**

(See Appendix.)

**Bills and Resolutions.**

By Senators Oneal and Duggan:

S. J. R. No. 1, Proposing an amendment to Section 9 of Article 8 of the Constitution of the State of Texas.

Providing that for all years after 1934 the State tax on property, exclusive of the tax necessary to pay the public debt and the taxes provided for the benefit of public free school, and of taxes for the Confederate Pension, shall never exceed fifteen cents on the one hundred dollar valuation, and providing for Municipal taxation as is now provided in Section 9 of Article 8, of the Constitution of the State of Texas.

Read and referred to Committee on Constitutional Amendments.

By Senators Purl, Collie, Moore, DeBerry, Beck, Woodward, Rawlings, Poage, Greer, Oneal, Hornsby, Neal, Small, Russek, Hopkins, Stone, Fellbaum, Regan, Redditt, Holbrook, Murphy, Sanderford, Patton, Pace, Duggan:

S. J. R. No. 2, Proposing an amendment to the Constitution of the State of Texas by adding to Article 16 another section, Section 61, abolishing the fee system of compensating State, district, county, and precinct officers, and providing for the payment of salaries to said officers except public weighers, notaries public and county surveyors.

Read and referred to Committee on Constitutional Amendments.

By Senator Holbrook:

S. B. No. 29, A bill to be entitled "An Act making an appropriation to be paid out of the General Revenue Fund of the State of Texas the sum of Three Hundred and Twenty-one Dollars (\$321.00), not otherwise appropriated, to cover refund due the Clark Dredging Company, of Galveston, Texas, by the State of Texas for over franchise tax paid by the said company to the State of Texas, and declaring an emergency."

Read and referred to Committee on Finance.

By Senator Hornsby:

S. B. No. 30, A bill to be entitled "An Act providing for storage of wild game birds, or wild game animals in public cold storage plants; defining such public cold storage plants; requiring the keeping of records of such stored game; providing the time when such game may be placed on storage; providing for inspection of record books and public cold storage plants where game may be stored; providing suitable penalties and declaring an emergency."

Read and referred to Committee on State Affairs.

By Senator Russek:

S. B. No. 31, A bill to be entitled "An Act expressly repealing Chapter 7 of Title 11 of the 1925 Revised Criminal Statutes of Texas, and specifically providing that all of Articles 666 to 694, inclusive, of the 1925 Revised Criminal Statutes of Texas, including any amendments thereto, or any laws or acts inconsistent with this repealing Act, are

and shall be repealed, in entirety, and declaring an emergency."

Read and referred to Committee on Criminal Jurisprudence.

By Senator DeBerry:

S. B. No. 32, A bill to be entitled "An Act amending Chapter 273, page 411, section 1, Acts of the Fortieth Legislature, 1927, Regular Session, relating to salaries of Judges of the Supreme Court, Judges of the Court of Criminal Appeals, Judges of the Commission of Appeals, Judges of the Commission in Aid of Judges of Court of Criminal Appeals, Judges of the several Courts of Civil Appeals, judges of the district and/or criminal district courts; and declaring an emergency."

Read and referred to Committee on Finance.

By Senator Parr:

S. B. No. 33, A bill to be entitled "An Act amending the provisions of Article 2968, Revised Civil Statutes of Texas, 1925, as amended by H. B. No. 128, Chapter No. 26, of the Fifth Called Session of the Forty-first Legislature providing for the method and time of securing certificates of exemption by persons exempt under the law from payment of poll taxes, etc."

Read and referred to Committee on Privileges and Elections.

By Senator Regan:

S. B. No. 34, A bill to be entitled "An Act providing for a closed season in Glasscock County upon quail, doves, and pheasants, for a period of three (3) years, and declaring an emergency."

Read and referred to Committee on State Affairs.

#### Senators Excused.

The following Senators were excused for the day on account of important business:

Senator Woodruff on motion of Senator Poage.

Senator Woodul on motion of Senator Pace.

On motion of Senator Redditt, Senator Cousins was excused until Wednesday morning on account of important official business.

#### Appointments Announced.

The Chair announced the following appointments by the Lieutenant Governor:

Miss Hazel Avery, private secretary to Lieutenant Governor.

T. J. McLendon, Assistant Sergeant-at-arms.

#### Free Conference Committee Report.

Senator DeBerry sent up the following Free Conference Committee report:

Hon. Coke Stevenson, Speaker of the House of Representatives.

Hon. Walter Woodul, President Pro Tempore of the Senate.

Sirs: We, your Free Conference Committee, appointed to confer on Senate Concurrent Resolution No. 3, beg leave to report that we have considered same and ask that it do pass in the following form:

S. C. R. No. 3. Be it

Resolved, By the Senate of the State of Texas, the House of Representatives concurring, that the salary and per diem of the Members of the House of Representatives is hereby fixed and shall be Ten Dollars (\$10.00) per day. The Senate having fixed its per diem (pay) at Eight Dollars (\$8.00) per day, the salary and per diem of the Members of the Senate is hereby fixed and shall be Eight Dollars (\$8.00) per day. Be it further

Resolved, In addition to the per diem, the members of each House shall be entitled to mileage in going to and returning from the seat of government, which mileage shall be Two Dollars and Fifty Cents (\$2.50) for every twenty-five miles, the distance to be computed by the nearest and most direct route of travel, from a table of distance prepared by the Comptroller to each county seat now or hereafter to be established; no member shall be entitled to mileage for any extra session that may be called in one (1) day after the adjournment of the Regular or any Called Session of this Legislature.

DeBERRY,

POAGE,

PARR,

ONEAL,

On the part of the Senate.

ANDERSON of Bexar,

RAMSEY,

COOMBES,

SCOTT,

On the part of the House.

The report was read and rejected by the following vote:

## Yeas—11.

Beck.	Parr.
DeBerry.	Poage.
Holbrook.	Purl.
Hornsby.	Rawlings.
Murphy.	Small.
Oneal.	

## Nays—15.

Blackert.	Neal.
Collie.	Pace.
Duggan.	Patton.
Fellbaum.	Regan.
Greer.	Russek.
Hopkins.	Sanderford.
Martin.	Stone.
Moore.	

## Absent—Excused.

Woodruff.

## (Pairs Recorded.)

Senator Redditt (present) who would vote yea, with Senator Cousins (absent) who would vote nay.

Senator Woodward (present) who would vote yea, with Senator Woodul (absent) who would vote nay.

## Reasons for Vote.

We vote "yea" on Conference Committee Report on Senate Concurrent Resolution No. 3, being the per diem resolution, for the reason that the "House" has already fixed the per diem of their members at \$10.00 per day by a simple resolution and it is now beyond the power of the Senate to fix the per diem of the members of the House by a concurrent resolution; and we therefore vote to concur in the fixing of the per diem of the members of the Senate at \$8.00 per day. We take this position because we consider it our imperative duty to vote to reduce the expenses of our State Government, and for the further reason that good conscience compels us to vote to cut our own per diem before we vote to cut the pay of other officers and employees of the several State departments, which must be done in order to relieve the overburdened and suffering taxpayers of this State.

HOLBROOK,  
HORNSBY.

**Motion for New Conference  
Committee.**

Senator Moore moved that a new Conference Committee on S. C. R. No. 3 be appointed.

Senator Purl moved as a substitute that the original Conference Committee be re-appointed with instructions to continue their labors.

The substitute motion was lost by the following vote:

## Yeas—5.

Holbrook.	Purl.
Hornsby.	Redditt.
Murphy.	

## Nays—21.

Blackert.	Parr.
Collie.	Patton.
Duggan.	Poage.
Fellbaum.	Rawlings.
Greer.	Regan.
Hopkins.	Russek.
Martin.	Sanderford.
Moore.	Small.
Neal.	Stone.
Oneal.	Woodward.
Pace.	

## Present—Not Voting.

DeBerry.

## Absent.

Beck.

## Absent—Excused.

Cousins.

Woodul.

Woodruff.

The original motion prevailed.

## Senate Simple Resolution No. 14.

Senator Poage sent up the following resolution:

Be it resolved by the Senate of Texas, That the pay of the members of the Senate shall during the Regular Session of the Forty-third Legislature be and the same is hereby fixed at Eight Dollars per diem. Be it further

Resolved, That in addition to the per diem the members of the Senate shall be entitled to mileage in going to and returning from the seat of government at the rate of 10 cents per mile, the distance to be computed as heretofore provided at past sessions of the Legislature.

POAGE,  
DeBERRY,  
HOLBROOK.

The resolution was read.

Senator Moore raised the following points of order:

1. The Senate cannot appropriate money by simple resolution.

2. The Senate has just rejected a conference report setting the per diem of the Senate at \$8.00 and no action has been taken since then; therefore this resolution, which would set the per diem of the Senate at \$8.00, is out of order.

3. The adoption of the resolution is tantamount to instruction of the committee.

The Chair, Senator Woodward, sustained the first point of order and held that it was therefore not necessary to rule on the other points.

#### Free Conference Committee Appointed.

The Chair appointed the following on the part of the Senate as members of the Free Conference Committee on S. C. R. No. 3:

Senators Blackert, Stone, Regan, Redditt, and Rawlings.

#### Messages From the House.

Hall of the House of Representatives,  
Austin, Texas, January 16, 1933.  
Hon. Walter Woodul, President Pro Tempore of the Senate.

Sir: I am directed by the House to inform the Senate that the House has adopted the free conference report on S. C. R. No. 3 by a vote of 70 yeas and 40 nays.

Respectfully submitted,

LOUISE SNOW PHINNEY,  
Chief Clerk, House of Representatives.

Hall of the House of Representatives.  
Austin, Texas, January 16, 1933.  
Hon. Walter Woodul, President Pro Tempore of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following resolution.

H. C. R. No. 6, Providing for a joint session of the House and Senate at 11:30 a. m., Tuesday, January 17, 1933, for the purpose of inaugurating Honorable Miriam A. Ferguson as Governor of Texas, and Honorable Edgar E. Witt as Lieutenant Governor of Texas.

Respectfully submitted,

LOUISE SNOW PHINNEY,  
Chief Clerk, House of Representatives.

#### H. C. R. No. 6.

The Chair laid before the Senate:  
H. C. R. No. 6, Providing for a joint session at 11:30 Tuesday morning, January 17, 1933, for the in-

auguration of Hon. Miriam A. Ferguson as Governor of Texas and Hon. Edgar E. Witt as Lieutenant Governor of Texas.

Read and adopted.

#### Messages From the Governor.

Executive Mansion,  
Austin, Texas, Jan. 16, 1933.  
Members of the Texas Senate.

I am submitting the name of the Hon. C. A. Wheeler, Judge of the 53rd Judicial District, whom I have today appointed as Presiding Judge of the Third Administrative Judicial District of Texas, for confirmation.

Very truly yours,

R. S. STERLING,

Governor.

Read and referred to Committee on Governor's Nominations.

Executive Mansion,  
Austin, Texas, Jan. 16, 1933.  
To the Senate of the Forty-third Legislature.

On January 1, 1933, I sent up the names of Judge R. L. Batts, Robert L. Holliday and Edward Crane to succeed themselves as members of the Board of Regents of the University of Texas, basing my action upon the opinion written by Assistant Attorney General Wright Morrow, in which he held that the expiration date of the Regents of the University of Texas was the day that the Legislature convened.

Controversy having arisen as to the correctness of this opinion, I addressed a request to the Attorney General, James V. Allred, asking him to review this opinion and advise me whether he concurred in the opinion or not. I am attaching hereto the opinion I have received from the Attorney General this morning, in which he advises he believes the opinion to be correct, but finds that the custom has been that the incoming Governor has made these appointments.

In view of his opinion I am hereby withdrawing the names of the gentlemen mentioned above whom I appointed to succeed themselves. I feel it highly necessary that your honorable body pass a statute fixing definitely the date of the expiration of all appointees so that this question may not arise in the future.

Respectfully submitted,

R. S. STERLING,

Governor of Texas.

**Communication From Attorney General.**

The Chair laid before the Senate the following communication from the Attorney General:

Offices of the Attorney General.  
Austin, Texas, Jan. 16, 1933.  
To the President and Members of the State Senate, Austin, Texas.  
Gentlemen:

Reference to Senate Resolution No. 8 calling upon this department to advise the Senate as to the terms of all appointive offices:

As some of the Senators recognized, this involves a stupendous amount of work and considerable study. On Saturday, January 14th, we furnished the Senate with photostatic copies of certain records of the Secretary of State, which we thought might be of assistance.

At the time of the passage of this resolution the Attorney General was personally present at the hearing of the Railroad Commission in East Texas, and did not return to the office until the morning of January fifteenth. He worked all day yesterday and until eleven o'clock last night on one opinion dealing with one of the matters which we understand you have before you for consideration, to-wit, the question of the duty or right of appointment of members of the Board of Regents of the State University.

At the same time yesterday we were called upon by Governor R. S. Sterling for an opinion covering this matter, and I am attaching hereto copy of an opinion addressed to the Governor, which I believe will answer the question submitted by the Senate with reference to the appointment of three members of the Board of Regents of the University.

We will this morning proceed to pass upon another of the questions which we understand confronts the Senate, to-wit, the appointment of members of the State Board of Education.

In order to clarify matters if the Senate desires further information or advice as to the other boards, it will be of material assistance to this department if you will kindly advise us the specific question or appointment under consideration.

Respectfully submitted,  
JAMES V. ALLRED,  
Attorney General of Texas.

Offices of the Attorney General,  
Austin, Texas, Jan. 16, 1933.  
Honorable R. S. Sterling, Governor of Texas, Executive Offices, Capitol.

Dear Governor:

Receipt is acknowledged of your inquiry of the fifteenth instant, reading as follows:

"Will you kindly advise me whether or not you concur in the opinion prepared by First Assistant Attorney General Wright Morrow of February 9, 1925, in reference to the expiration dates of the Regents of the University of Texas?"

In response to said inquiry, you are advised that I concur in the main with the opinion referred to above, which is Conference Opinion No. 2583 of this department, dated February 9, 1925, printed at page 467, Report of the Attorney General, 1924-1926.

Your attention is called to the fact, however, that Mr. Morrow's opinion covers several points, and, while I believe the opinion is correct in its principal holding, I find myself unable to agree with certain statements, not material to a decision of the question then under consideration.

In your letter you do not apprise us as to the exact inquiry you have in mind, but Judge Bruce W. Bryant, First Assistant Attorney General, has given me a brief statement of the situation as he understands it from a conversation with you today. I am informed that at the time of the convening of the Regular Session of the Forty-third Legislature, you nominated for reappointment and confirmation by the Senate three members of the present Board of Regents of the State University. The question has arisen as to whether you, as retiring Governor, should make these appointments for the succeeding six-year terms or whether the incoming governor (to be inaugurated January 17, 1933) would be entitled to fill these offices. As you will observe from the official records and history of appointments to the Board of Regents of the University, hereinafter set out, the problem now confronting you is not identical with the question submitted to my predecessor in 1925.

The Journal of the State Senate for the Regular Session of the Thirty-ninth Legislature which convened

January 13, 1925, (Journal p. 23), reveals that the Honorable Pat M. Neff, the then retiring Governor, sent to the Senate for confirmation on January 14, 1925, the following appointments to the Board of Regents of the University: Charles E. Marsh, Tucker Royall, W. S. Whaley, Dr. Joe Wooten, and R. G. Storey. On January 19, 1925, Governor Neff submitted the additional name of Earl C. Hankamer. This made a total of six names submitted to the Senate just prior to the retirement of Governor Neff. (Journal p. 76). The Journal further shows (p. 23 and 76) that these men had been nominated by the Governor for appointments for places on the Board of Regents on various dates during the years 1923 and 1924. On January 19, 1925, Tucker Royall and R. G. Storey were confirmed. (Journal, p. 80). The other four appointments having been rejected, Governor Neff submitted on January 20, 1925, the appointments of Cullen F. Thomas, W. W. Wooten, T. W. Davidson and Miss Florence Sterling to fill the places made vacant by the failure of the Senate to confirm Marsh, Wooten, Hankamer and Whaley. (Journal, p. 82.) After Governor Miriam A. Ferguson had been inaugurated, she appointed Marcellus Foster, Ted Dealey, George W. Tyler, S. C. Padelford and L. J. Truett. This was on January 29, 1925. (Journal, p. 180). The message submitting the appointments stated that each of these appointees were to fill certain unexpired terms with the exception of Marcellus Foster, whose appointment carried this notation, "full six year term." Messrs. Foster, Dealey, Tyler, Padelford and Truett were all confirmed on January 30, 1925. (Journal, p. 200.)

On February 9, 1925, Governor Ferguson submitted the following additional appointments for membership on the Board of Regents: Edward Howard, to fill the unexpired term of Ted Dealey, resigned; Mart H. Royston to fill the unexpired term of L. J. Truett, resigned; H. J. L. Stark, "for the term ending 1931," Sam Neatherly, "for the term ending 1931." (Journal, p. 322). On February 11, 1925, these four appointments were confirmed by the Senate. (Journal, p. 379.)

In the meantime, on January 30th,

1925, the Senate by simple resolution No. 21 requested Governor Ferguson to advise that body as to the dates of the terms of office of all Regents for the University, including those serving and those submitted to the Senate. (Journal, p. 192.)

In answer to that resolution, Governor Ferguson advised the Senate as follows:

"Gentlemen: Complying with your request as set forth in Resolution No. 21, by Senator Murphy, requesting the dates of the terms of office of all regents of the University of Texas, those now serving, and those submitted to the Senate, you are advised as follows:

"Mrs. H. J. O'Hair (now serving); term expires May 11, 1927.

"R. G. Storey (now serving); term expires June 28, 1929.

"H. J. L. Stark (now serving); term expires May 28, 1925.

"Ted Dealey (newly appointed); term expires June 28, 1929.

"Geo. W. Tyler (newly appointed); term expires June 28, 1929.

"S. C. Padelford (newly appointed); term expires November 1, 1927.

"L. J. Truitt (newly appointed); term expires May 11, 1927.

"Marcellus Foster, appointed for full six-year term.

Respectfully submitted,

MIRIAM A. FERGUSON,

Governor.

"P. S. One vacancy by virtue of the resignation of H. A. Wroe, whose term expires February 3, 1925." (Journal, p. 223.)

Thereafter, by Senate Resolution No. 25, Attorney General Moody was requested to advise the Senate of the dates when the term of each member of the Board of Regents of the University of Texas begins and expires, and the length of term of each. Other information was requested in the resolution, relative to the terms of the members of the Board of Regents, said Resolution being copied in Mr. Morrow's opinion Journal, p. 242). In compliance with that request, the then Attorney General, on February 9, 1925, rendered the opinion inquired about by you. The substance of that opinion is that Governor Ferguson was wrong in her statement found at page 223 of the Journal of said Session, when she fixed the expiration

dates of three of the members in May, three in June and one in November. Mr. Morrow (who wrote the opinion) held in substance that an appointment for an unexpired term of office was valid only until the date when that regular term would have expired had no vacancy occurred. That opinion was in accord with a previous conference opinion (No. 2572, dated November 19, 1924, addressed to the Hon. W. W. Boyd, Game, Fish & Oyster Commissioner, and written by Assistant Attorney General L. C. Sutton. See Report of Attorney General, 1924-1926, p. 344). Mr. Sutton's opinion was to the effect that an appointment to a vacancy in an office was for an unexpired term only, and not for a full term.

It is held in Mr. Morrow's opinion, however, that the term of a member of the Board of Regents expired with the convening of the Regular Session of the second succeeding Legislature after the session at which he was appointed. This opinion is self-contradictory; in four different places, it is stated that the terms of the members of the Board of Regents expire with the convening of the Legislature; while, in the same breath, the writer states that:

"We do not think it particularly material as to the day of the month that a regent is appointed, because, as stated heretofore, the term of office is for six years beginning during the Regular Session of the Legislature and ending at the convening of or during the session of the second succeeding regular session thereafter."

Mr. Morrow was evidently in doubt as to the exact date that the terms of the members of the board expired, but correctly held that they expired during the Regular Session of the second succeeding Regular Session of the Legislature after the session at which they were appointed. It will be observed, therefore, that the primary question for consideration at the time of Mr. Morrow's opinion was whether the terms of the members of the Board of Regents expired during Regular Sessions of the Legislature or at arbitrary dates during the months of May, June and November (which happened to be the months during which some appointments had been made).

To answer your inquiry, it be-

comes necessary to examine the statutes and their heretofore established construction. The earliest governing board provided for the University of Texas was a Board of Administrators of ten members, created by an Act of 1858, two of said members being the Governor and the Chief Justice of the Supreme Court, and the other eight appointed by the Governor by and with the consent of the Senate. (4 Gammel's Laws of Texas, 1020.)

The first "Board of Regents" was created by the Act of 1881, being "An Act to Establish the University of Texas." It provided for a governing board, to be called the "Board of Regents," and to consist of eight members selected from different portions of the State, to be nominated by the Governor and appointed by and with the consent of the Senate. Section 6 of that Act reads as follows:

"The Board of Regents shall be divided into classes, numbered one, two, three and four, as determined by the board at their first meeting; shall hold their offices two, four, six and eight years, respectively, from the time of their appointment. From and after the 1st of January, 1883, two members shall be appointed at each session of the Legislature to supply the vacancies made by the provisions of this section, and in the manner provided for in the preceding section, who shall hold their offices for eight years respectively." (9 Gammel's Laws of Texas, p. 172.)

It will be noted that the second sentence of Section 6, above quoted, specifically provides that two members of the board were to be appointed at each session of the Legislature, beginning with that session convening after the first day of January, 1883. The Act of 1881 was approved March 30, 1881, and took effect June 30, 1881. It was the intention of the Legislature at that time that a board with overlapping terms be created. However, while the constitutional provision did not permit that, some overlapping terms were filled. The custom was established in 1901 and has since been followed by which each incoming Governor appointed a full board of eight members. Such board served for two years and a new board was appointed every two years.

The last Board of Regents of the University selected prior to the adoption of the constitutional amendment of 1912 was that appointed by Governor O. B. Colquitt shortly after he was inaugurated in January, 1911. On January 19, 1911, Governor Colquitt appointed eight members of the board, all of whom were confirmed on January 20, 1911. (See page 128, Senate Journal, Regular Session, Thirty-second Legislature, 1911.)

Section 30a of Article 16 of the Constitution of Texas was submitted to the people by the Legislature at its Regular Session in 1911, and was adopted in 1912. That section reads as follows:

"The Legislature may provide by law that the members of the Board of Regents of the State University and boards of trustees or managers of the educational, eleemosynary, and penal institutions of the State, and such boards as have been, or may hereafter be established by law, may hold their respective offices for the term of six (6) years, one-third of the members of such boards to be elected or appointed every two (2) years in such manner as the Legislature may determine; vacancies in such offices to be filled as may be provided by law, ("") and the Legislature shall enact suitable laws to give effect to this section."

On February 8, 1913, following the adoption of this amendment, and shortly after his inauguration for a second term, Governor Colquitt appointed seven members of the Board of Regents. Two additional members were appointed later on, one on July 1, 1913, the effective date of Chapter 103 of the General Laws of the Regular Session of the Thirty-third Legislature, reading, insofar as applicable to the present question as follows:

"Section 1. The Board of Regents of the University of Texas shall be composed of nine persons, who shall be qualified voters; the Board of Directors of the Agricultural and Mechanical College of Texas shall be composed of nine persons, who shall be qualified voters; the State Board of Regents of the Normal Colleges shall be composed of six persons, who shall be qualified voters; the Board of Regents of the College of Industrial Arts for Women shall be com-

posed of six persons, three of whom may be women; the Board of Managers of the Blind Institute, the Deaf and Dumb Institute, the Deaf, Dumb and Blind Institute for Colored Youths, the Confederate Home, the Confederate Woman's Home, of each of the Insane Asylums, the Epileptic Colony and the Orphans' Home, shall be composed of six members, who shall be qualified voters.

"Sec. 2. The members of the governing board of each of the State institutions of higher education mentioned in Section 1 shall be selected from different portions of the State, and shall be nominated by the Governor and appointed by and with the advice and consent of the Senate. In event of a vacancy on said board, the Governor shall fill said vacancy until the convening of the Legislature and the ratification by the Senate. The members of each of said boards who shall be in office at the time this Act takes effect shall continue to exercise their duties until the expiration of their respective terms, as shall be determined according to the requirements of Section 3 of this Act, and additional members shall be appointed in the manner prescribed herein to fill out the membership herein provided for.

"Sec. 3. The following members of the several governing boards shall be divided into equal classes, numbered one, two and three, as determined by each board at its first meeting after this Act shall become a law, these classes shall hold their offices two, four and six years respectively, from the time of their appointment. And one-third of the membership of each board shall hereafter be appointed at each regular session of the Legislature to supply the vacancies made by the provisions of this Act and in the manner provided for in Section 2, who shall hold their offices for six years, respectively. The duties of the several governing boards shall be determined by law heretofore enacted or that may hereafter be enacted, no changes in said duties being made by this Act."

That portion of the first section of the above quoted Act dealing with the Regents of the University of Texas now appears as Article 2907, Revised Civil Statutes, 1925.



On the 20th day of September, 1913, the nine men then constituting the Board of Regents drew lots and they (or someone thereafter appointed to succeed such as had resigned) held office for approximately two, four or six years, from February 8, 1913. (Senate Journal, Regular Session, Thirty-ninth Legislature, pages 364, 365.)

Prior to 1913, it had been the long established practice and custom for each incoming Governor, during each regular biennial session of the Legislature, to appoint a Board of Regents. Since 1913, it has likewise been the practice for each newly elected Governor to appoint three persons to membership on the Board of Regents, each to serve for six years.

In 1915 three appointments were made by Governor Jas. E. Ferguson, on February 3, shortly after his first inauguration. In 1917 three appointments were made by him on January 27, shortly after his second term began. In 1919, the three appointments were made on January 31, by Governor W. P. Hobby. In 1921, the appointments were made on May 11 by Governor Pat M. Neff; while in 1923 they were made by him on June 28. (Page 365, Senate Journal, Regular Session, Thirty-ninth Legislature.)

Since 1923 appointments have been on varying dates, but always after the recently elected Governor had been inaugurated, with the exception of the above stated instance when Governor Neff made certain appointments which were not confirmed.

Since the rendition of the opinion of February 9th, 1925, by Mr. Morrow, this established custom of appointment by the incoming Governor has been continued. Governor Miriam A. Ferguson, shortly after her inauguration in 1925, appointed members of the Board of Regents, as hereinabove related. Three members were appointed by Governor Dan Moody after his first inauguration; he appointed three additional members in 1929, said appointments being made after his inauguration for a second term. Three new members were appointed by Your Excellency after your inauguration in 1931.

My conclusion that the opinion of Mr. Morrow is not controlling and

is not in point, is borne out by the fact that Governor Moody (during whose administration as Attorney General the opinion was rendered) later during both of his administrations as Governor followed the long established custom of his predecessors.

Mr. Morrow in his opinion (p. 469) invoked the well known rule of contemporaneous construction (with which I am in entire accord) and points to the fact that in January, 1915, three persons were appointed as Regents, to-wit: Dr. George McReynolds, Dr. S. J. Jones and M. Faber. He evidently overlooks, however, the fact that the regents named were appointed by the incoming Governor, at that time (January, 1915) James E. Ferguson. The rule of construction by custom supports therefore, my conclusion that the duty or privilege of appointment, in this instance, is that of the incoming administration.

It will be noted that the statute merely states that the members of the Board of Regents shall be appointed at each Regular Session of the Legislature. It does not state that these appointments shall be made at the convening of each Regular Session of the Legislature; and, in my opinion, the Legislature, in enacting Chapter 103, General Laws, Regular Session of the Thirty-third Legislature in 1913, did not intend to disrupt the then established custom of having appointments made by the incoming Governor. One additional member was added to the Board of Regents by that act, raising the membership to the present number (nine) and the terms of office of the members were lengthened and overlapping terms were created under authority of Section 30a, Article 16 of the Constitution. (Adopted in 1912.)

In this opinion I have made no reference to those members who were appointed to serve unexpired terms. Members appointed to serve unexpired terms would not serve a full six years, but would serve to the date of expiration of the term to which they were appointed, which expiration date will be unchanged by the vacancy and appointment to fill the vacancy. (See Opinions of the Attorney General, 1924-1926, page 344.)

In my opinion, the practical con-

struction of the statutes, which has been long followed by the chief executives of this State, constitutes the true construction thereof and settles the question of the duty or privilege of appointment of members of the Board of Regents.

Very truly yours,

JAMES V. ALLRED,  
Attorney General.

Read and, on motion of Senator Oneal, ordered printed in the Journal.

#### Senate Simple Resolution No. 11.

The question recurred upon S. S. R. No. 11.

The resolution was adopted.

#### Recess.

On motion of Senator Parr, the Senate, at 11:08 o'clock a. m., recessed until 2:30 o'clock p. m.

#### After Recess.

The Senate met at 2:30 o'clock p. m., pursuant to recess, and was called to order by President Pro Tem. Walter Woodul.

#### Message From the House.

Hall of the House of Representatives,  
Austin, Texas, January 16, 1933.  
Hon. Walter Woodul, President Pro Tempore of the Senate.

Sir: I am directed by the House to inform the Senate that the House has granted the request of the Senate for the appointment of a new conference committee to consider the differences between the two Houses on S. C. R. No. 3. The following are conferees on the part of the House:

Ramsey, Scott, Head, Steward, Dunagan.

Respectfully submitted,

LOUISE SNOW PHINNEY,  
Chief Clerk, House of Representatives.

#### At Ease.

On motion of Senator Martin, the Senate at 2:31 o'clock p. m., stood at ease until 3:30 o'clock p. m.

#### In Session.

The Senate was called to order at 3:30 o'clock p. m., by President Pro Tem. Walter Woodul.

#### Senate Simple Resolution No. 15.

Senator Sanderford sent up the following resolution:

Whereas, The John Tarleton Mili-

tary Band from Stephenville, Erath County, is going to play for the inauguration of the Governor and the Lieutenant Governor, and is going to play a concert from 5 to 6 o'clock this p. m. at the Driskill Hotel. Therefore be it

Resolved, That the Senate is hereby invited to attend this concert.

Read and adopted.

#### Free Conference Committee Report.

Senator Blackert sent up the following Free Conference Committee report:

Austin, Texas, Jan. 16, 1933.

Hon. Coke Stevenson, Speaker of the House of Representatives.

Hon. Walter Woodul, President Pro Tempore of the Senate.

Sirs: We, your Free Conference Committee appointed to confer on Senate Concurrent Resolution No. 3, beg leave to report that we have considered same and ask that it do pass in the following form:

S. C. R. No. 3, Be it

Resolved, By the Senate of the State of Texas, the House of Representatives concurring, that the salary and per diem of the members of the House of Representatives and of the Senate is hereby fixed and shall be Ten Dollars (\$10.00) per day. Be it further

Resolved, In addition to the per diem, the members of each House shall be entitled to mileage in going to and returning from the seat of government, which mileage shall be Two Dollars and Fifty Cents (\$2.50) for every twenty-five miles, the distance to be computed by the nearest and most direct route of travel, from a table of distance prepared by the Comptroller to each county seat now or hereafter to be established; no member to be entitled to mileage for any extra session that may be called in one (1) day after the adjournment of the Regular or any Called Session of this Legislature.

BLACKERT,

STONE,

REGAN,

RAWLINGS,

On the part of the Senate.

RAMSEY,

DUNAGAN,

SCOTT,

HEAD,

STEWARD,

On the part of the House.

The report was read.

Senator Purl moved that the report not be adopted and that the conference committee be instructed to continue their deliberations. The motion was lost by the following vote:

Yeas—9.

Collie.	Oneal.
DeBerry.	Poage.
Holbrook.	Purl.
Hornsby.	Small.
Murphy.	

Nays—15.

Beck.	Parr.
Blackert.	Patton.
Fellbaum.	Rawlings.
Hopkins.	Regan.
Martin.	Russek.
Moore.	Sanderford.
Neal.	Stone.
Pace.	

Absent.

Duggan. Greer.

Absent—Excused.

Woodruff.

(Pairs Recorded.)

Senator Redditt (present) who would vote yea, with Senator Cousins (absent) who would vote nay.

Senator Woodward (present) who would vote yea, with Senator Woodul (absent) who would vote nay.

The report was adopted by the following vote:

Yeas—14.

Blackert.	Parr.
Fellbaum.	Patton.
Hopkins.	Rawlings.
Martin.	Regan.
Moore.	Russek.
Neal.	Sanderford.
Pace.	Stone.

Nays—11.

Beck.	Murphy.
Collie.	Oneal.
DeBerry.	Poage.
Duggan.	Purl.
Holbrook.	Small.
Hornsby.	

Absent.

Greer.

Absent—Excused.

Woodruff.

(Pairs Recorded.)

Senator Redditt (present) who would vote nay, with Senator Cousins (absent) who would vote yea.

Senator Woodward (present) who would vote nay, with Senator Woodul (absent) who would vote yea.

Message From the House.

Hall of the House of Representatives,  
Austin, Texas, January 16, 1933.  
Hon. Walter Woodul, President Pro Tempore of the Senate.

Sir: I am directed by the House to inform the Senate that the House has adopted the new conference committee report on S. C. R. No. 3 by a vote of 78 yeas and 39 nays.

Respectfully submitted,

LOUISE SNOW PHINNEY,  
Chief Clerk, House of Representatives.

S. C. R. No. 5.

Senator Poage sent up the following resolution:

Now, therefore be it resolved, by the Senate of Texas, the House of Representatives concurring, That the pay of the members of the Senate from the Thirteenth Senatorial District, the Eighteenth Senatorial District and the Eighth Senatorial District for the Regular Session of the Forty-third Legislature, be and the same is hereby fixed at \$8.00 per diem, and no more, provided, however, that for each and every day any of the aforementioned members shall be absent from a session of the Senate, unless such member shall have been excused by the presiding officer, on account of illness or death, such member shall receive \$1.00 per day and no more.

POAGE,  
BLACKERT,  
DeBERRY.

The resolution was read and adopted.

Senate Simple Resolution No. 16.

Senator Holbrook sent up the following resolution:

Whereas, A concurrent resolution has been adopted by a majority of both the Senate and House setting the salaries of the members thereof at ten dollars (\$10) per day; and

Whereas, It is the opinion of the Senators representing the 17th, 11th and 23rd Senatorial Districts of Texas that owing to the economic

situation, the maximum amount of pay allowed under the Constitution should not be voted and that the expenses of the State government generally should be reduced at least twenty-five per cent; now be it

Resolved by the Senate of the State of Texas, that the pay of the Senators representing the 17th, 11th and 23rd Senatorial Districts be set at eight dollars (\$8) per day during the term of the Regular Session of the Forty-third Legislature.

HOLBROOK,  
ONEAL,  
PURL.

The resolution was read.

Senator Parr moved to table the resolution. The motion was lost.  
The resolution was adopted.

#### Resolution Signed.

The Chair, President Pro Tem. Walter Woodul, gave notice of signing, and did sign, in the presence of the Senate, after its caption had been read, the following resolution:

S. C. R. No. 3.

#### Adjournment.

On motion of Senator Russek, the Senate, at 4:48 o'clock p. m., adjourned until 10 o'clock tomorrow morning.

### APPENDIX.

#### Petitions and Memorials.

(Telegram.)

Fort Sam Houston, Texas.

January 16, 1933.

Hon. Bob Barker, Secretary of State  
Senate, State Capitol, Austin,  
Texas.

Acknowledging your cordial invitation of January 16th to me and my staff to attend inaugural ceremonies on January 17th. You are informed that I shall not be able to attend in person because of plans requiring my presence at El Paso on that date. Lateness of receipt of invitation prevents change in plans. Colonels Kilbourne and Clark of my staff will attend as representatives.

WINANS.

Randolph Field, Texas,

January 16, 1933.

Bob Barker, Secretary of the Senate,  
Austin, Texas.

Absence on furlough General Danforth unable to attend inaugural

ceremonies. Thank you most cordially for invitation.

ARTHUR THOMAS,  
Adjutant.

### FIFTH DAY.

Senate Chamber,  
Austin, Texas,  
January 17, 1933.

The Senate met at 10 o'clock a. m., pursuant to adjournment, and was called to order by President Pro Tem. Walter Woodul.

The roll was called, a quorum being present, the following Senators answering to their names:

Beck.	Pace.
Blackert.	Parr.
Collie.	Patton.
DeBerry.	Poage.
Duggan.	Purl.
Fellbaum.	Rawlings.
Greer.	Redditt.
Holbrook.	Regan.
Hopkins.	Russek.
Hornsby.	Sanderford.
Martin.	Small.
Moore.	Stone.
Murphy.	Woodul.
Neal.	Woodward.
Oneal.	

Absent—Excused.

Cousins. Woodruff.

Prayer by the Chaplain.

Pending the reading of the Journal of yesterday, the same was dispensed with on motion of Senator Fellbaum.

#### Committee Reports.

(See Appendix.)

#### Senate Simple Resolution No. 17.

Senator Patton sent up the following resolution:

Whereas, The Old Grey Mare Band is within the Capital City; and

Whereas, This band is composed of cowboys living within the confines of Houston; and

Whereas, This band made history at the Chicago National Convention in June of last year; now therefore, be it

Resolved, That the Old Grey Mare Band be invited to play for the Senate.

WOODUL,  
PATTON.

Read and adopted.